



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120417412-2412-01]

RIN 0648-XCO36

Accountability Measures for the Recreational Sector of Gray Triggerfish in the Gulf of Mexico for the 2012 Fishing Year

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the recreational sector of gray triggerfish in the Gulf of Mexico (Gulf) for the 2012 fishing year through this final temporary rule. Based on the projected recreational landings estimates, NMFS determined that the recreational annual catch target (ACT) for Gulf gray triggerfish will be met by June 11, 2012.

Therefore, NMFS closes the recreational sector for Gulf gray triggerfish on June 11, 2012, and it will remain closed through December 31, 2012. This action is necessary to reduce overfishing of the Gulf gray triggerfish resource.

DATES: This rule is effective 12:01 a.m., local time on June 11, 2012, until 12:01 a.m., local time on January 1, 2013.

ADDRESSES: Electronic copies of documents supporting the final temporary rule implementing gray triggerfish management measures (77 FR 28308, May 14, 2012), which include a draft environmental impact statement and a regulatory flexibility analysis, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727-824-5305 or e-mail: Peter.Hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery

managers to end overfishing of stocks and to minimize bycatch and bycatch mortality to the extent practicable. To accomplish this, the Magnuson-Stevens Act implemented new requirements that annual catch limits (ACLs) and AMs be established to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACL if they occur.

The Southeast Data, Assessment, and Review (SEDAR) completed a benchmark stock assessment for gray triggerfish in 2006 (SEDAR 9). SEDAR 9 indicated that the gray triggerfish stock was both overfished and possibly undergoing overfishing. Subsequently, Amendment 30A to the FMP established a gray triggerfish rebuilding plan beginning in the 2008 fishing year (73 FR 38139, July 3, 2008). In 2011, a SEDAR update stock assessment for gray triggerfish determined that the gray triggerfish stock was still overfished and was additionally undergoing overfishing. The 2011 SEDAR update stock assessment indicated the 2008 gray triggerfish rebuilding plan had not made adequate progress toward ending overfishing and rebuilding the stock as described in the rebuilding plan in Amendment 30A to the FMP.

The Council is developing more permanent measures to end overfishing and rebuild the gray triggerfish stock in Amendment 37 to the FMP. However, these measures will not likely be

implemented until the end of the 2012 fishing year or at the beginning of the 2013 fishing year. Therefore, on May 14, 2012, NMFS published a final temporary rule to reduce overfishing of gray triggerfish on an interim basis (77 FR 28308). The final temporary rule is effective May 14, 2012, through November 10, 2012.

In Amendment 30A to the FMP, the Council established a 21 percent commercial and 79 percent recreational allocation of the gray triggerfish ABC. These allocations were used to set the commercial and recreational sector-specific ACLs. The acceptable biological catch (ABC) recommended by the Council's Scientific and Statistical Committee (SSC), after their review of the 2011 update assessment, was 305,300 lb (138,482 kg), round weight. Based on the allocations established in Amendment 30A to the FMP, the final temporary rule set, on an interim basis, a reduced commercial ACL of 64,100 lb (29,075 kg), round weight, and a reduced recreational ACL of 241,200 lb (109,406 kg), round weight.

NMFS applied the Council's ACL/ACT control rule to the sector-specific ACLs to set the sector-specific ACTs as described in the final temporary rule. Therefore, on an interim basis, the final temporary rule set the commercial ACT (commercial quota) at 60,900 lb (27,624 kg), round weight, and the recreational ACT at

217,100 lb (98,475 kg), round weight.

To reduce the risk of overfishing, Amendment 30A to the FMP established gray triggerfish post-season AMs. The regulations at 50 CFR 622.49(a)(2)(ii), stated that if the recreational ACL of 457,000 lb (207,291 kg) was exceeded, NMFS would reduce the length of the following year's fishing season by the amount necessary to ensure that recreational landings did not exceed the recreational ACT during the following year. Recreational landings were to be evaluated relative to the ACL based on a 3-year running average of landings, as described in the FMP. The recreational ACL for 2010 and 2011 was 457,000 lb (207,291 kg). The recreational ACT for 2010 and 2011 was 405,000 lb (183,705 kg). The 2011 ACL was exceeded by 4,549 lb (2,063 kg). Recreational landings were compared to a 3-year running average (as described in the FMP) relative to the ACL, and for 2011, average landings for 2009 - 2011 were used. Despite the overage in 2011, average landings for 2009-2011 (384,910 lb (174,592 kg)) were below the 457,000 lb (207,291 kg) ACL, and AMs were not triggered.

Based on recent trends in recreational landings and anticipated future recreational effort, the Council and NMFS determined that there is a reasonable probability that the recreational sector will exceed its ACL in future years.

Therefore, the final temporary rule established an in-season AM for the recreational sector to prohibit the recreational harvest of gray triggerfish (a recreational sector closure) if the recreational ACT is reached or projected to be reached. This in-season AM is intended to provide an additional level of protection to ensure that the recreational ACL is not exceeded and that the risk of overfishing will be reduced. The final temporary rule also implemented a post-season AM, similar to the post-season AM in Amendment 30A, except in the final temporary rule, the ACL overage is based on a single year of landings instead of a 3-year running average.

Based on the 2012 projected recreational landings estimates, the recreational ACT for Gulf gray triggerfish will be met by June 11, 2012. Therefore, NMFS implements the in-season AM and will close the recreational sector for Gulf gray triggerfish on June 11, 2012. The recreational sector will remain closed through December 31, 2012. This action is necessary to reduce overfishing of the Gulf gray triggerfish resource.

Classification

This action responds to the best scientific information available. The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf gray triggerfish and is

consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.49(a)(17)(ii) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. The AMS state that NMFS will file a notification with the Office of the Federal Register to close the recreational sector for Gulf gray triggerfish for the remainder of the fishing year if recreational landings reach or are projected to reach the recreational ACT specified in 50 CFR 622.49(a)(17)(ii). All that remains is to notify the public of the reduced recreational fishing season for gray triggerfish for the remainder of the fishing year. Additionally, there is a need to immediately notify the public of the reduced recreational fishing season for gray triggerfish, since gray triggerfish are overfished and undergoing overfishing and this waiver will help further protect the Gulf gray triggerfish resource.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to

immediately implement this action to protect the gray triggerfish resource. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota. Also, providing prior notice and opportunity for public comment on this action would be contrary to the public interest because many of those affected by the length of the recreational fishing season, particularly charter vessel and headboat operations, book trips for clients in advance and, therefore need as much time as possible to adjust business plans to account for the reduced recreational fishing season.

For the aforementioned reasons, the Assistant Administrator, NMFS, also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 et seq.

Dated: May 30, 2012

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[FR Doc. 2012-13463 Filed 05/30/2012 at 4:15 pm; Publication
Date: 06/04/2012]